

# COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-Chair  
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## VIRGINIA HOUSING COMMISSION

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Common Interest Communities Workgroup  
October 18, 2018, 1:00 PM  
House Room 1 of the Capitol

### **Members Present:**

David Bulova, Chair; Betsy Carr, Cynthia Hall, Mike Urban, Andrew Clark, Chip Dicks, Heather Gillespie, Michelle Gowdy, Trisha Henshaw, Jerry Wright, Pia Trigiani, Elizabeth Palen, Executive Director

Presenters: Senator Scott Surovell, Bill Marr, Community Associations Institute Ellie Coddling, Director, Code Development and Compliance Division, Fairfax County, and Karlee Copeland, Chief, Stormwater Management Branch, Department of Public Works and Environmental Services, Fairfax County

The meeting was called to order by Delegate David Bulova, Chair at 1:00 PM.

### **Topics for Consideration:**

(1) Home -based Businesses, (2) Reserve Fund Disclosure on Sale and Reserve Fund Budget Disclosure, (3) Property Owner Association (POA) Lot Owner Rights, and (4) Transfer of Stormwater Facilities from the Developer to POAs.

Senator Scott Surovell stated there has been a history of POAs restricting home-based child care. He said home-based child care should be allowed in POA's if the following conditions occur: (1) if there are zoning provisions in a locality, that ban ancillary use, but allow regulation by the POA, and (2) if the POA's declaration gives express authority to regulate home-based childcare businesses, or (3) by a POA's rule if the rule expressly says it applies to home-based child care businesses.

In *Scott v Walker*, the Supreme Court said that if residential use language is ambiguous, such as in the case of short-term rentals, home-based businesses are not prohibited in POAs.

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DELEGATE DANNY W. MARSHALL  
DELEGATE DAVID L. BULOVA  
DELEGATE BETSY CARR  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR GEORGE L. BARKER  
SENATOR WILLIAM M. STANLEY, JR.

CYNTHIA HALL  
LAURA D. LAFAYETTE  
LAWRENCE PEARSON

After discussion concerning this issue, the members present in the workgroup were in unanimous agreement that a proposed bill should carry the group's endorsement to the full Commission.

Next, discussed was a concern that POAs do not have adequate reserve funds.

Senator Surovell stated that as there is a need for more transparency for capital improvements. The proposed bill draft should include: (1) a statement by the POA saying how much money is currently being held in reserve (2) how much money is required to adequately fund the association. Additionally, it should be required that the yearly budget reflect these facts.

Bill Marr suggested that a potential draft should include self-managed associations, as they too need reserves to operate efficiently.

The workgroup unanimously agreed to the bill in concept and recommended advancing it to the full Commission.

Delegate Kelly Convirs-Fowler's introduced HB 1041 in the 2018 legislative session. The bill required a POA to release the count of votes made by the POA Board. The workgroup's proposed draft added language saying that only if such count was requested would it be released. The logic behind the addition was to save the POA from a requirement to send out the vote count to all members in the association each time a vote is taken.

The workgroup unanimously agreed in concept to the additional language.

Ellie Coddington, and Karlee Copeland then spoke to the workgroup about many of their concerns about the transfer of stormwater facilities from the developer to the POA.

Before plan approval for either a (1) private maintenance agreement, or (2) an agreement showing the stormwater facility will be publicly maintained, must be signed.

The workgroup members discussed the difficulties that occur when the developer turns over the stormwater facility to the POA. The stormwater management ponds are not always operating as they were designed to operate.

Fairfax County maintains dry ponds in residential areas other than apartments or condominiums.

Ellie Coddington noted that it is a governmental function that has been pushed onto a private entity. Karlee Copeland added that the covenant for the stormwater facilities runs with the land.

Homeowners' association boards need to know where the ponds are located and how to have them inspected, maintained and monitored. Associations are not given full disclosure about new forms of Best Management Practices (BMPs) and where the BMPs are located. Fairfax County owns approximately 10-20% of BMP's in Fairfax County as opposed to ownership by a POA or homeowners' association. Approximately 80% of those owner by Fairfax County are non-compliant with current codes.

Adding to the discussion, Andrew Clark, Homebuilders Association of Virginia, stated that partial bond release is complex if it is a proffered condition during the rezoning process.

Pia Trigiani mentioned that homeowners' associations are nonstock entities, and nonstock corporations have statutory requirements, including the maintenance of stormwater facilities.

The workgroup determined that this issue does not yet have a resolution. The Chair noted that if the interested parties determine there is a legislative solution for the stormwater facilities issue, he will call another meeting of the workgroup.

The Chair then called for public comment and, upon hearing none, the meeting was adjourned at 3:10 PM.